

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-01-DT-523
)	
Thomas A. Brothers)	NAL/Acct. No. 200232360004
Berkley, Michigan)	
)	FRN # 0006-1077-26

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 14, 2002

By the District Director, Detroit Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Thomas A. Brothers has apparently violated Section 301 of the Communications Act of 1934 ("Act")¹, as amended, by operating an unlicensed radio transmitter on frequency 88.3 MHz. We conclude that Thomas Brothers is apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000).

II. Background

2. On July 27, 1998, an investigation of unlicensed radio broadcasts on 92.7 MHz in the Berkley, Michigan area was conducted. Commission agents located the source of the radio transmissions on 92.7 MHz to 3845 Ellwood, Berkley, Michigan. An inspection was attempted but the operator of the station was not home; however, the agents were able to talk to him later in the day by telephone and information was obtained which indicated that Thomas A. Brothers was the owner and operator of the station. On July 28, 1998, the Detroit District Director issued a Warning Letter for unlicensed operation to Thomas A. Brothers, 3845 Ellwood, Berkley, Michigan. Information was received that indicated Mr. Brothers would cease the unlicensed operation.

3. On September 15, 2000, an investigation of unlicensed radio broadcasts on 87.9 MHz in the Berkley, Michigan area was conducted. A Commission agent located the source of the radio transmissions on 87.9 MHz to 3845 Ellwood, Berkley, Michigan. This was the same location that was identified previously on July 27, 1998, as broadcasting unlicensed radio broadcasts. On October 6, 2000, the Detroit District Director issued a NOTICE OF UNLICENSED RADIO OPERATION Warning Letter to Thomas Brothers, 3845 Ellwood, Berkley, Michigan. Information was received that indicated Mr. Brothers would cease his unlicensed radio broadcasts.

4. On September 2, 2001, in connection with new complaints of unlicensed radio broadcasts in the Berkley, Michigan area, a Commission agent located the source of radio transmissions on 88.3

¹ 47 U.S.C. § 301.

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MHz to 3845 Ellwood, Berkley, Michigan. This was the same location that was identified previously on July 27, 1998, and September 15, 2000 as broadcasting unlicensed radio broadcasts. On September 14, 2001, Commission agents met with Thomas A. Brothers and inspected the radio station at 3845 Ellwood, Berkley, Michigan. During this inspection Mr. Brothers indicated that he had operated the station but was discontinuing the operation.

III. Discussion

5. Based on the evidence before us, we find that Thomas A. Brothers willfully² violated Section 301 of the Act. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")³, sets the base forfeiture amount at \$11,000 for operation of an unlicensed transmitter. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁴ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that Thomas A. Brothers does not have an overall history of compliance and the violations are egregious. Applying the Policy Statement and the statutory factors to the instant case and applying the inflation adjustments, we believe that an eleven thousand dollar (\$11,000) monetary forfeiture is warranted.

IV. Ordering Clauses

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁵ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules ("Rules")⁶ Thomas A. Brothers is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand dollars (\$11,000) for willfully and repeatedly violating Section 301 of the Act.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Thomas A. Brothers SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232360004, and FRN # 0006-1077-26.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80.

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

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9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232360004.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Thomas A. Brothers, 3845 Ellwood, Berkley, Michigan 48072-3123.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office

⁷ See 47 C.F.R. § 1.1914.